

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FRANCISCO PEREZ,)	
)	
Plaintiff,)	08 C 1009
)	
v.)	Judge Aspen
)	
CHICAGO POLICE OFFICERS R.)	
JOHNSON, STAR #3471, M. FLORES,)	Magistrate Judge Denlow
STAR #7019, JOHN DOE, JOHN POE,)	
JANE DOE and THE CITY OF CHICAGO,)	JURY DEMANDED
)	
Defendants.)	

**DEFENDANTS JOHNSON AND FLORES' ANSWER TO
PLAINTIFF'S COMPLAINT, DEFENSE AND JURY DEMAND**

Defendants, Chicago Police Officers Richard Johnson and Michael Flores, by one of their attorneys, Kathryn M. Doi, Assistant Corporation Counsel, hereby submit their answer to Plaintiff's Complaint, defense and jury demand as follows:

JURISDICTION

1. The jurisdiction of the court is invoked pursuant to the Civil Rights Act, 42 U.S.C. Section 1983, 1981 and 1985; 28 U.S.C. Section 1331 and Section 1343(a); the Constitution of the United States; and pendant jurisdiction as provided under U.S.C. 1367(a). The amount in controversy exceeds \$10,000.00, exclusive of cost and interest against each Defendant.

ANSWER: Defendants admit that jurisdiction is proper. Defendants deny the remaining allegations contained in this paragraph.

PARTIES

2. Plaintiff FRANCISCO PEREZ is a citizen of the United States.

ANSWER: Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

3. Defendant JOHNSON, STAR #3471, was at all times material to this Complaint a Chicago Police Officer. He is sued individually.

ANSWER: Defendants admit the allegations contained in this paragraph.

4. Defendant FLORES, STAR #7019, was at all times material to this Complaint a Chicago Police Officer. She is sued individually.

ANSWER: Defendants admit that Officer Flores, Star #7019 was at all times material to this Complaint a Chicago Police Officer and is being sued individually. Defendants deny that Officer Flores is female.

5. Defendants JOHN DOE, JOHN POE and JANE DOE were at all times material to this Complaint Chicago Police Officers. Each one is sued individually.

ANSWER: Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

6. Defendant CITY OF CHICAGO is a municipal corporation duly incorporated under the laws of the State of Illinois and is the employer and principal of defendant police officers.

ANSWER: Defendants admit the allegations contained in this paragraph.

7. Defendants were at all times material to this Complaint acting under color of law.

ANSWER: Defendants admit the allegations in this paragraph as to them. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph as to unknown officers.

STATEMENT OF FACTS

8. On April 15, 2006, Plaintiff resided in the City of Chicago, County of Cook, State of Illinois.

ANSWER: Upon information and belief, Defendants admit the allegations contained in this paragraph.

9. On April 15, 2006, at approximately 12:00 a.m., individual Defendants grabbed Plaintiff by his shirt, shoved him against the wall, and then punched him twice in his left eye.

ANSWER: Defendants deny the allegations in this paragraph as to them. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph as to unknown officers.

10. Subsequently, individual Defendants violently kicked and stomped on the Plaintiff's ribs, back, legs and head.

ANSWER: Defendants deny the allegations in this paragraph as to them. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph as to unknown officers.

11. An individual Defendant then struck the Plaintiff multiple times with a police issued nightstick.

ANSWER: Defendants deny the allegations in this paragraph as to them. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph as to unknown officers.

12. At the police station, an individual Defendant confiscated the Plaintiff's wallet and removed \$400.

ANSWER: Defendants deny the allegations in this paragraph as to them. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph as to unknown officers.

13. Due to the injuries caused by the Defendants, an unknown police officer took the Plaintiff to Holy Cross Hospital on April 15, 2006 where he was treated for lacerations to the face, scalp, and a contusion to his left knee.

ANSWER: Defendants admit that Plaintiff was taken to Holy Cross Hospital on April 15, 2006 for medical treatment. Defendants are without information sufficient to form a belief as

to what Plaintiff was treated for. Defendants deny the remaining allegations in this paragraph as to them. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph as to unknown officers.

14. Due to the injuries caused by the Defendants, the Plaintiff was treated at Saint Mary and Elizabeth Medical Center on April 17, 2006 and was treated for pain to his abdomen and right quad.

ANSWER: Defendants are without information sufficient to form a belief as to whether Plaintiff received medical treatment on April 17, 2006. Defendants deny the remaining allegations in this paragraph as to them. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph as to unknown officers.

15. The Defendants actions were wanton and willful.

ANSWER: Defendants deny the allegations in this paragraph as to them. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph as to unknown officers.

16. The Defendants use of excessive force against the Plaintiff directly resulted in his damages as set forth in more detail below.

ANSWER: Defendants deny the allegations in this paragraph as to them. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph as to unknown officers.

17. Moreover, the Plaintiff has been severely traumatized as a result of the Defendants' actions. The Plaintiff experienced mental and physical pain, distress and anguish, and experienced a lack of enjoyment in life.

ANSWER: Defendants deny the allegations in this paragraph as to them. Defendants

are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph as to unknown officers.

COUNT I

(Plaintiff's Claim for Assault and Battery Section 1983 against Defendants)

18. The Plaintiff realleges paragraphs 1-17 with the same force and effect as if fully set forth herein.

ANSWER: Defendants adopt and incorporate their answers from paragraphs 1 through 17 as their answer to this paragraph.

19. Without reason to believe the Plaintiff had committed any offense, the individual Defendants illegally used excessive force against the Plaintiff. Said actions by the individual Defendants constitute assault and battery and are actionable under 42 U.S.C. Section 1983. The actions of the individual Defendants were the direct and proximate cause of the violation of the Plaintiff's Fourth Amendment Rights and caused him extreme pain and suffering.

ANSWER: Defendants deny the allegations in this paragraph as to them and further deny any illegal or wrongful conduct. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph as to unknown officers.

WHEREFORE, Defendants Flores and Johnson request that judgment be entered in their favor and against Plaintiff, for costs of defending this suit and any other relief this Honorable Court deems necessary and proper.

COUNT II

(755 ILCS 10/9-102 - Defendant CITY OF CHICAGO)

20. The Plaintiff realleges paragraphs 1-19 with the same force and effect as if fully set forth herein.

ANSWER: Defendants adopt and incorporate their answers from paragraphs 1 through 19 as their answer to this paragraph.

21. Defendant CITY OF CHICAGO is the employer of individual Defendants.

ANSWER: Defendants admit the allegations contained in this paragraph.

22. The Defendants committed the acts alleged above under color of law and in the scope of their employment as employees of the City of Chicago.

ANSWER: Defendants admit that they were acting under color of law and in the scope of their employment with the City. Defendants deny the remaining allegations contained in this paragraph and further deny any illegal or wrongful conduct. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in this paragraph as to unknown officers.

WHEREFORE, Defendants Flores and Johnson request that judgment be entered in their favor and against Plaintiff, for costs of defending this suit and any other relief this Honorable Court deems necessary and proper.

AFFIRMATIVE DEFENSE

Defendants Flores and Johnson are government officials, namely police officers, who perform discretionary functions. Defendants Flores and Johnson have admitted that they encountered and arrested Plaintiff. At all times material to the events alleged in Plaintiff's Complaint, a reasonably competent police officer, objectively viewing the facts and circumstances then confronting these Defendants, could have believed their actions regarding their encounter with Plaintiff to be lawful, in light of clearly established law and the information that Defendants possessed. Defendants Flores and Johnson are therefore entitled to qualified immunity on Plaintiff's claims under federal law.

JURY DEMAND

Defendants, Michael Flores and Richard Johnson, request a trial by jury.

Respectfully Submitted,

/s/ Kathryn M. Doi

KATHRYN M. DOI

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